

Senate Bill No. 1521

Passed the Senate May 17, 2004

Secretary of the Senate

Passed the Assembly June 17, 2004

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 1060, 1061, and 1063 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1521, Alarcon. Displaced Janitor Opportunity Act.

Existing law, the Displaced Janitor Opportunity Act, requires contractors and subcontractors that are awarded contracts or subcontracts to provide janitorial or building maintenance services at a particular job site or sites, to retain, for a period of 60 days, certain employees who were employed at that site by the previous contractor or subcontractor. The successor contractors and subcontractors are further required to offer continued employment to those employees retained for the 60-day period if their performance during that 60-day period is satisfactory.

This bill would extend the 60-day period to 90 days for purposes of these provisions. If a service contract is terminated as a result of a change in property ownership, the sale of a building, or a change in the awarding authority, the bill would provide that the above-described retention requirements, and related notice requirements, apply to the new property owner or awarding authority. The bill would make other clarifying changes.

The people of the State of California do enact as follows:

SECTION 1. Section 1060 of the Labor Code is amended to read:

1060. The following definitions shall apply throughout this chapter:

(a) "Awarding authority" means any person that awards or otherwise enters into contracts for janitorial or building maintenance services performed within the State of California, including any subcontracts for janitorial or building maintenance services.

(b) "Contractor" means any person that employs 25 or more individuals and that enters into a service contract with the awarding authority.



(c) “Employee” means any person employed as a service employee of a contractor or subcontractor who works at least 15 hours per week and whose primary place of employment is in the State of California under a contract to provide janitorial or building maintenance services. “Employee” does not include a person who is a managerial, supervisory, or confidential employee, including those employees who would be so defined under the federal Fair Labor Standards Act.

(d) “Person” means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, property owner, or other entity that may employ individuals or enter into contracts.

(e) “Service contract” means any contract that has the principal purpose of providing services through the use of service employees.

(f) “Subcontractor” means any person, other than an employee, who enters into a contract with a contractor to assist the contractor in performing a service contract.

(g) “Successor service contract” means a service contract for the performance of essentially the same services as were previously performed pursuant to a different service contract at the same facility that terminated within the previous 30 days. A service contract entered into more than 30 days after the termination of a predecessor service contract shall be considered a “successor service contract” if its execution was delayed for the purpose of avoiding application of this chapter.

SEC. 2. Section 1061 of the Labor Code is amended to read:

1061. (a) (1) If an awarding authority notifies a contractor that the service contract between the awarding authority and the contractor has been terminated or will be terminated, the awarding authority shall indicate in that notification whether a successor service contract has been or will be awarded in its place and, if so, shall identify the name and address of the successor contractor. The terminated contractor shall, within three working days after receiving that notification, provide to the successor contractor identified by the awarding authority, the name, date of hire, and job classification of each employee employed at the site or sites covered by the terminated service contract at the time of the contract termination.



(2) If the terminated contractor has not learned the identity of the successor contractor, if any, the terminated contractor shall provide that information to the awarding authority, which shall be responsible for providing that information to the successor contractor as soon as that contractor has been selected.

(3) The requirements of this section shall be equally applicable to all subcontractors of a terminated contractor.

(b) (1) A successor contractor or successor subcontractor shall retain, for a 90-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding four months or longer at the site or sites covered by the successor service contract unless the successor contractor or successor subcontractor has reasonable and substantiated cause not to hire a particular employee based on that employee's performance or conduct while working under the terminated contract. This requirement shall be stated by awarding authorities in all initial bid packages that are governed by this chapter.

(2) The successor contractor or successor subcontractor shall make a written offer of employment to each employee, as required by this section, in the employee's primary language or another language in which the employee is literate. That offer shall state the time within which the employee must accept that offer, but in no case may that time be less than 10 days. Nothing in this section requires the successor contractor or successor subcontractor to pay the same wages or offer the same benefits as were provided by the prior contractor or prior subcontractor.

(3) If at any time the successor contractor or successor subcontractor determines that fewer employees are needed to perform services under the successor service contract or successor subcontract than were required by the terminated contractor under the terminated contract or terminated subcontract, the successor contractor or successor subcontractor shall retain employees by seniority within the job classification.

(c) The successor contractor or successor subcontractor, upon commencing service under the successor service contract, shall provide a list of its employees and a list of employees of its subcontractors providing services at the site or sites covered under that contract to the awarding authority. These lists shall indicate which of these employees were employed at the site or sites by the



terminated contractor or terminated subcontractor. The successor contractor or successor subcontractor shall also provide a list of any of the terminated contractor's employees who were not retained either by the successor contractor or successor subcontractor, stating the reason these employees were not retained.

(d) During the 90-day transition employment period, the successor contractor or successor subcontractor shall maintain a preferential hiring list of eligible covered employees not retained by the successor contractor or successor subcontractor from which the successor contractor or successor subcontractor shall hire additional employees until all of the terminated contractor's or terminated subcontractor's employees have been offered employment with the successor contractor or successor subcontractor.

(e) During the initial 90-day transition employment period, the successor contractor or successor subcontractor shall not discharge without cause an employee retained pursuant to this chapter. Cause shall be based only on the performance or conduct of the particular employee.

(f) At the end of the 90-day transition employment period, a successor contractor or successor subcontractor shall provide a written performance evaluation to each employee retained pursuant to this chapter. If the employee's performance during that 90-day period is satisfactory, the successor contractor or successor subcontractor shall offer the employee continued employment. Any employment after the 90-day transition employment period shall be at-will employment under which the employee may be terminated without cause.

(g) If a service contract is terminated as a result of a change in property ownership, the sale of a building, or a change in the awarding authority, the notice and retention requirements of this section shall apply to the new property owner or awarding authority.

SEC. 3. Section 1063 of the Labor Code is amended to read:

1063. (a) This chapter only applies to contracts entered into on or after January 1, 2002.

(b) Except for the obligations specified in subdivisions (a) and (b) of Section 1061, nothing in this chapter changes or increases the relationship or duties of a property owner or an awarding



authority, or their agents, with respect to contractors, subcontractors, or their employees.

(c) Nothing in this chapter limits the right of a property owner or an awarding authority to terminate a service contract or to replace a contractor with another contractor or with the property owner's or awarding authority's own employees, provided that this employment is offered to the terminated contractor's employees pursuant to, and provided in a manner consistent with, Section 1061. Section 1062 shall apply to any violation of this subdivision.



Approved _____, 2004

Governor

